

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAMILARE SONOIKI,

Plaintiff,

v.

HARVARD UNIVERSITY, HARVARD
UNIVERSITY BOARD OF OVERSEERS,
and THE PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,

Defendants.

Civil Action No. 1:19-cv-12172

**ASSENTED-TO MOTION FOR LEAVE TO FILE DEFENDANTS' OPPOSITION TO
PLAINTIFF'S JANUARY 18, 2023 MOTION TO COMPEL AND EXHIBITS UNDER
SEAL**

Pursuant to Local Rule 7.2, and this Court’s Order dated January 18, 2023, Defendants Harvard University, Harvard University Board of Overseers, and the President and Fellows of Harvard College (together “Harvard”)¹ hereby move for leave to file under seal documents produced in discovery and deposition testimony excerpts in support of their Opposition to Plaintiff’s January 18, 2018 Motion to Compel, as well as to redact the names and personally identifiable information of non-parties named in those sealed documents. This Court previously approved Harvard’s request to seal the May 30, 2013 email underlying Plaintiff’s Motion to Compel. As explained below, the other documents Harvard seeks to file under seal should also be sealed because these documents contain confidential and private information about Plaintiff and non-parties, and are marked as “Confidential” pursuant to the Protective Order in this action. These documents are attached as exhibits B–E to the Declaration of David Cohen (the “Exhibits”).

On February 1, 2023, pursuant to Local Rule 7.1, Harvard intends to file an Opposition to Plaintiff’s January 18, 2023 Motion to Compel (the “Opposition”) through ECF. Harvard further moves to file a redacted Opposition and to submit to the Court an unredacted Opposition under seal. Counsel for Harvard have conferred with counsel for Plaintiff, who has indicated that Plaintiff assents to the relief requested. In support hereof, Harvard states as follows:

1. The Court entered an agreed-upon Protective Order between Plaintiff and Defendants on October 26, 2022. Dkt No. 70.
2. Pursuant to the Protective Order, the parties were permitted to, and did, designate deposition testimony, deposition exhibits, and all other Discovery Material—

¹ Plaintiff’s Complaint incorrectly identifies the Harvard entities as “Harvard University, Harvard University Board of Overseers, and the President and Fellows of Harvard College.” The President and Fellows of Harvard College is the legal entity that comprises the various named defendants and is the only proper party to this litigation.

defined as “any information in any form (including without limitation, a document, electronically stored information, witness testimony, or response to written discovery) that is produced or generated in disclosures or responses to discovery in this matter, or appended to pleadings in this matter (whether or not produced)”—as “Confidential.” *See id.* at ¶¶ 2, 11.

3. The Protective Order further provides that Confidential Information cannot be filed in the public record in this action without an agreement between the parties to file the material with agreed-upon redactions or to waive the designation as “Confidential Information.” *See id.* at ¶ 20.

4. Harvard’s Opposition includes citations to, and quotes from, Confidential Information. The Exhibits consist of deposition testimony that has been designated as “Confidential,” documents and information protected against disclosure by the Family Educational Rights and Privacy Act (“FERPA”), and other personal and private information about Plaintiff and non-parties.

5. At the Motion to Dismiss stage of these proceedings, the parties agreed to a redaction and sealing procedure wherein Harvard filed certain confidential and sensitive documents under seal, along with a redacted Memorandum of Law in Support of its Motion to Dismiss. Dkt No. 21. The Court granted the motion on that same day. Dkt. No. 22 (Casper, J.).

6. Harvard seeks to follow the same procedure here, and Plaintiff has assented to this procedure.

7. At the January 18, 2023 Status Conference, this Court approved Harvard’s request to file under seal with respect to Exhibit D.

8. With the Court's permission, Harvard will submit its Opposition through ECF with limited redactions over portions of the Exhibits that quote or cite material and testimony previously designed as "Confidential" in accordance with the Protective Order, and submit to the Court an unredacted version of the Opposition under seal.

9. With the Court's permission, Harvard will also file the Exhibits under seal. Harvard notes that certain Exhibits were produced in this litigation with redactions and pseudonyms to protect FERPA information contained within them.

10. The parties have conferred and agree that the procedure described herein is consistent with the parties' Protective Order, and is necessary and appropriate in order to protect the personal and private information of Plaintiff and third parties.

WHEREFORE, Harvard respectfully requests that the Court grant this Motion and allow the designated materials to be filed redacted and/or under seal, as described herein.

Dated: February 1, 2023

Respectfully submitted,

/s/ Anton Metlitsky

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

The undersigned counsel hereby certifies that Defendants' counsel has conferred in good faith with counsel for Plaintiff regarding the foregoing Motion. Plaintiff, through counsel, has indicated that he assents to the relief requested.

/s/ Anton Metlitsky
Anton Metlitsky

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on February 1, 2023.

/s/ Anton Metlitsky
Anton Metlitsky